

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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LOLA McGEE,

Plaintiff,

v.

PATRICK R. DONAHOE, Postmaster
General of the United States Postal
Service, Pacific Area, Agency,

Defendants.

Case No. 2:13-cv-01426-MMD-VCF

ORDER

Before the Court is Magistrate Cam Ferenbach's Report and Recommendation ("R&R") (dkt. no. 7), regarding plaintiff Lola McGee's Complaint. No objections were filed, but Plaintiff did file an Amended Complaint. Plaintiff has also filed a Motion for Order to Serve Complaint. (Dkt. no. 10.) Both the Amended Complaint and the Motion are premature as the Court had not adopted the R&R.

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge's report and recommendation where no objections have been filed. *See United States v.*

1 *Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review
2 employed by the district court when reviewing a report and recommendation to which no
3 objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D.
4 Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the view
5 that district courts are not required to review "any issue that is not the subject of an
6 objection"). Thus, if there is no objection to a magistrate judge's recommendation, then
7 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.
8 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to
9 which no objection was filed).

10 Nevertheless, this Court finds it appropriate to engage in a *de novo* review in
11 order to determine whether to adopt the R&R. The R&R screens the Complaint and
12 finds that the Complaint fails to allege sufficient facts for the Court to determine whether
13 Plaintiff has exhausted her administrative remedies before initiating this employment
14 action. The R&R recommends dismissal without prejudice and with leave to amend.
15 Upon review of the R&R and the record in this case, the Court agrees with the
16 Magistrate Judge.

17 It is hereby ordered that the R&R (dkt. no. 7) is accepted and adopted. The
18 Complaint is dismissed without prejudice and with leave to amend. As Plaintiff has filed
19 the Amended Complaint, the Clerk of the Court shall file the Complaint and the
20 Amended Complaint. The Clerk shall issue summons to the defendants named in the
21 Amended Complaint, deliver the same to the U.S. Marshal for service and send blank
22 copies of the USM-285 forms to Plaintiff.


23 It is further ordered that the plaintiff shall have twenty (20) days to furnish to the
24 U.S. Marshal the required USM-285 forms. Within twenty (20) days after plaintiff
25 receives copies of the completed USM-285 forms from the U.S. Marshal, plaintiff must
26 file a notice with the Court identifying which defendants were served and which were not
27 served, if any. If the plaintiff wishes to have the U.S. Marshal attempt service again on
28 any unserved defendants, then a motion must be filed with the Court identifying the

1 unserved defendants, specifying a more detailed name and address, and indicating
2 whether some other manner of service should be used. Pursuant to the Federal Rules
3 of Civil Procedure Rule 4(m), service must be accomplished within one hundred twenty
4 (120) days from the date that the complaint was filed.

5 It is further ordered that from this point forward, plaintiff will serve upon
6 defendants, or their attorney if they have retained one, a copy of every pleading, motion,
7 or other document submitted for consideration by the court. Plaintiff shall include with
8 the original paper submitted for filing a certificate stating the date that a true and correct
9 copy of the document was mailed to the defendants or their counsel. The Court may
10 disregard any paper received by a district judge, magistrate judge, or the Clerk which
11 fails to include a certificate of service.

12 It is further ordered that Plaintiff's Motion for Order to Serve Complaint (dkt. no.
13 10) is denied as moot.

14 DATED THIS 26th day of February 2014.

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17 MIRANDA M. DU
18 UNITED STATES DISTRICT JUDGE
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